INVESTMENT CLIMATE STATEMENT FOR SOUTH AFRICA 2001

A.1 Openness to Foreign Investment

1. South Africa (SA) proactively seeks foreign investment as a key part of its economic policy. Through its investment agency and the travels of key ministers, the South African Government (SAG) has conducted a number of investment promotion efforts in the United States. Auto components, chemicals, electronics, information technology, pharmaceuticals, telecommunications, textiles, clothing, and tourism have been identified by SAG as priority areas for attracting US investment into SA.

2. South Africa offers an attractive climate for foreign investors and, as a result, a large number of American firms have invested or reinvested in SA since the lifting of apartheid sanctions in the early 1990s, making the US the largest source of new investment in SA. South Africa has a substantial market with significant growth potential, an economy steadily moving toward market orientation, access to other markets in Africa, well-developed financial institutions and capital markets, excellent communication and transport links, liberal repatriation of profits and other earnings, lower labor costs compared to industrialized countries (although productivity is also lower), inexpensive electrical power and raw materials, and strong macroeconomic policies.

3. SA faces daunting challenges as it competes with other emerging market countries for foreign investment. These challenges include unemployment, crime, poor education systems, housing shortages, and health care challenges, the most significant of which is HIV/AIDS. As a result of shortcomings in the educational system and the departures of skilled labor from SA, the country continues to face a shortage of skilled labor, particularly at the professional and managerial levels. South Africa's reputation has also suffered due to its proximity to the tangle of conflicts that have engulfed its northern neighbors.

4. Investment has been spurred by a number of steps designed to make South Africa's markets more attractive to foreign investment. These include: reducing import tariffs, eliminating the discriminatory non-resident shareholders tax, eliminating most foreign exchange controls, halving the secondary tax on corporate dividends, lowering the corporate tax rate on earnings to 30 percent, and allowing foreign investors 100 percent ownership. Additionally, the government does not impose performance requirements on foreign companies and does not require new investments to comply with specific criteria (although the government encourages investments that strengthen, expand, or enhance technology in the various industries). At the same time, South Africa's tariff system is complex and is subject to rapid change. Foreign companies have also complained about delays or rejections in receiving work permits for some of their proposed expatriate employees.

5. The South African Government treats foreign investment essentially the same as domestic investment. Foreign firms are eligible for various national investment incentives such as export incentive programs, tax allowances, and other trade regulations.

6. However, in contrast to domestic investors, foreign investors face local borrowing restrictions imposed by exchange control authorities. Such restrictions apply to ‘affected persons’ - companies or other bodies in which (1) 75 percent or more of the capital assets or earnings may be used for payment to, or for the benefit of, a non-resident, or (2) 75 percent or more of the voting securities, voting power, power of control, capital, assets or earnings are vested in, or controlled by, any non-resident. No person in SA may provide credit to a non-resident or "affected person" without exchange control exemption.

7. Non-residents and "affected persons" may borrow up to 100 percent of the South African Rand value of funds introduced from abroad and invested locally. Additionally, the ability to borrow locally increases if the local enterprise is owned by both residents and non-residents.

8. The SAG recognizes the importance of restructuring and privatizing State-Owned Enterprises (SOE). During President Mandela's term, the Airports Company of South Africa (ACSA), South African Airways (SAA), and Telkom (communications) were all partially successfully privatized. Some smaller privatization efforts however, such as Sun Air (domestic airline) and Aventura (tourism and resorts), have resulted in major losses.

9. In November 1999, President Mbeki put SA privatization on the fast track by announcing an aggressive program to accelerate privatization of the "big four" parastatals: Eskom (power generation and distribution), Denel (defense), Transnet (transportation), and the remaining 70 percent of Telkom (telecommunications). Cumulatively, these parastatals are valued at over US$ 25 billion, and represent 90 percent of SAG assets. The Department of Public Enterprises (DPE) was charged to prioritize the top 300 (of over 800) SOE's, to create a publicly accessible SOE database, to set a privatization timetable and, most importantly, to build capacity within the Department. Although the DPE expects significant assets to be sold within the next three years, its privatization program has slowed somewhat from its earlier pace. The SAG's first major public offering - 30 percent of Telkom - was originally slated for June 2001, but that target date was not met. The new target date is the fourth quarter of 2001.

A.2 Regional Role

10. South Africa has been a member of the Southern African Development Community (SADC) since 1994. SADC is a sub-regional organization created in 1992 that seeks to foster economic growth and development through increased economic integration among its 14 member states. The SADC Trade Protocol is

the cornerstone of SADC's sub-regional trade integration effort and under it a Free Trade Agreement (FTA) went into effect last year. Some details of the FTA are still being negotiated, however.

11. South Africa has been a member of the South African Customs Union (SACU) since its inception in 1910. In addition to SA, the member countries are Botswana, Swaziland, Lesotho, and Namibia. SACU aims to promote free trade and cooperation on customs matters among its five member states. There are presently no internal tariff barriers between SACU member states, although different tax regimes result in the need for tax adjustments at the borders. All SACU members, except Botswana, share a common currency as members of the Common Monetary Area. The SACU agreement is again being renegotiated, however, disputes over the improvement of the revenue sharing formula and over the powers to be given the new SACU secretariat are slowing the negotiations. It is uncertain when a new agreement will be reached.

12. A Trade, Development, and Cooperation Agreement containing a Free Trade Agreement (FTA) went into force between South Africa and the European Union on January 1, 2000. Under the FTA, the EU is committed to the full liberalization of 95 percent of South African imports over a 10-year transitional period, while SA is to liberalize 86 percent of EU imports over a 12-year transitional period.

A.3 Currency Conversion and Transfer Policies

13. The South African Reserve Bank (SARB) administers foreign exchange controls through its Exchange Control Department. Commercial banks act as authorized dealers of foreign exchange on behalf of the SARB. Unless otherwise authorized by the Exchange Control Department, all transactions between residents and non-residents of SA must be accounted for through the authorized dealers.

14. In general, there are no controls on the removal of investment income or on capital gains by non-residents. Dividends from quoted companies may be paid to non-residents without the approval of the SARB. Non-quoted companies may pay dividends to non-residents, providing an auditor's report shows that such dividends are the result of earned profits. Foreign firms may invest in share capital without restriction.

15. Royalties, license fees, and certain other remittances to non-residents require the approval of the SARB. The Department of Trade and Industry (DTI) must approve manufacturing royalties. Royalty fees are based on a percentage of ex-factory sales with a maximum of 4 percent for consumer goods and 6 percent for intermediate and final capital goods.

16. Further questions on exchange control rules can be addressed to:

- South African Reserve Bank
  Exchange Control Division
  P.O. Box 427
  Pretoria 0001
  Telephone:(27) (12) 313-3911
  Fax: (27) (12) 313-3785
  Internet: www.resbank.co.za

A.4 Expropriation and Compensation

17. There is no record of any expropriation or nationalization of American investment in South Africa since 1924.

18. Under the Expropriation Act of 1975 and the Expropriation Act Amendment of 1992, the State is entitled to expropriate property for public necessity or public utility. The decision to expropriate is an administrative one vested in the State. Compensation is determined by the amount the property that would have been realized in an open market transaction by a willing seller to a willing buyer.

A.5 Dispute settlement

19. South Africa is a member of the New York Convention of 1958 on the recognition and enforcement of foreign arbitration awards, but is not a member of the International Center for the Settlement of Investment Disputes.

A.6 Performance Requirements and Incentives

20. The South Africa Department of Trade and Industry (DTI) has developed a number of incentive schemes and continues to introduce new ones. These South African incentive measures can be classified under four broad categories which are aligned with the process of development that each business goes through including:

- Innovation - (Research & Development.)
- Enterprise/Manufacture - (Establishment or expansion of a manufacturing concern.)
- Competitiveness - (Improving the efficiencies of an existing operation.)
- Export - (The exportation and marketing of manufactured goods.)

These incentives are available for a wide range of sectors. Further information may be obtained from the DTI website, www.dti.gov.za.

21. In addition, the state-owned Industrial Development Corporation provides preferential loan financing to the private sector for the development of viable secondary manufacturing in its target sectors. There are several

government-supported bodies that provide technical assistance for new industries. These include the Council for Scientific and Industrial Research (CSIR), a multi-disciplinary research, development, and implementation organization; Technifin, a government-owned firm financing the commercialization of new technology and products; and the Council for Mineral Technology, Metallurgy Research and Development (Mintek).

22. The South African government utilizes its position of both buyer and seller to promote the economic empowerment of historically disadvantaged groups through the Black Economic Empowerment (BEE) program. Governmental interest in promoting the interests of historically disadvantaged groups has, however, differed across ministries. In large-scale infrastructure projects, like the Maputo Corridor, BEE objectives were evident in requirements mandating the use of small and medium subcontractors. In other cases, like the tender for the third cellular license, having a BEE plan and partner was mandatory.

23. In September 1996, DTI introduced an Industrial Participation (IP) program. The goal of this program is to fast-track investment, exports, and technology development by using government procurement to leverage such initiatives. The program is designed to encourage foreign suppliers of major government contracts to seriously evaluate the SA market as a possible investment or business location. Under the program, all government and parastatal purchases or lease contracts (goods, equipment or services) with an imported content equal to or exceeding US$ 10 million (or the equivalent thereof) are subject to an IP obligation. This obligation requires the seller/supplier to engage in commercial or industrial activity equaling or exceeding 30 percent of the imported content of total goods purchased under government tender. The seller/supplier submits and implements business projects, generating IP credits in an amount that equals or exceeds the IP obligation. Excess credits may be "banked" for a period of four years after the obligation is discharged, however only 50 percent of a new obligation can be fulfilled by banked credits. The Industrial Participation obligation must be fulfilled within seven years of the effective date of the IP agreement.

A.7 Right to Private Ownership and Establishment

24. Private property rights, whether foreign or domestic, are strongly protected by South African law. Likewise, equal opportunities exist for both foreign and domestic private entities. In general, all foreign and domestic private entities are entitled to own business enterprises and engage in profit-making activities. Private entities are allowed freely to establish, acquire, and dispose of interests in business enterprises. The acquisition of an existing business enterprise is usually achieved through the purchase of shares or assets. The securities regulation code applies to public limited companies and to private companies with 10 or more shareholders, and capital and reserves in excess of 5 million Rand (US$ 625,000). If a stake of 30 percent or more is acquired, an offer must

be made to minority shareholders to acquire all their shares at a price equal to the highest paid by the investor.

25. Current government policy is to refrain from competing with the private sector. There are, however, a number of firms that enjoy a degree of protection through direct or indirect allowances from the government that bestow upon them a financial advantage over private entities. Among those firms benefiting from such allowances are: ADE (diesel engines), SASOL (synthetic fuels and petrochemicals), IDC (industrial development corporation), CSIR (scientific and industrial research and marketing innovations), and the Central Energy Fund family of companies, including Mossgas, the Strategic Fuel Fund, and Soekor, the state oil exploration company. In addition, Telkom (under 70 percent state control) enjoys a monopoly until the year 2002 on providing certain international and fixed line telecommunications services. At that time, the introduction of a second fixed line operator is expected. Transnet enjoys a monopoly on most transport and port services, and Eskom, the State electricity company, is responsible for nearly all generation and transmission of electricity. Eskom was corporatized in 2000 and pays dividends to the state as its sole share holder.

A.8 Protection of Property Rights

26. Intellectual property rights (IPR) are protected under a variety of laws and regulations. Patents may be registered under the Patents Act of 1978 and are granted for twenty years. Trademarks can be registered under the Trademarks Act of 1993, are granted for ten years, and may be renewed for an additional ten years. New designs may be registered under the Designs Act of 1967, which grants copyrights for five years. Literary, musical and artistic works, cinematographic films, and sound recordings are eligible for copyrights under the Copyright Act of 1978. This act is based on the provisions of the Berne Convention as modified in Paris in 1971 and was amended in 1992 to include computer software. The Department of Trade and Industry (DTI) administers these acts.

27. South Africa is a member of the Paris Union and acceded to the Stockholm text of the Paris Convention for the protection of intellectual property. SA is also a member of the World Intellectual Property Organization (WIPO). The SAG passed two IPR-related bills in Parliament at the end of 1997, the Counterfeit Goods Act and the Intellectual Property Laws Amendment Bills, thereby enhancing its IPR protection.

28. While South African IPR laws and regulations are largely TRIPS-compliant, there is continuing concern about copyright piracy and trademark counterfeiting. The U.S. copyright industry estimates that trade losses due to the piracy of copyrighted works continue to increase.

29. The U.S. and South African governments have held extensive consultations to clarify a section of the South African Medicines Act which appeared to grant the Minister of Health broad powers in regard to patents on pharmaceuticals. The US and South African governments reached an understanding that any action taken by the South African government will be compliant with TRIPS. A similar understanding was then reached between the pharmaceutical companies and the SA government. Draft regulations to implement the agreement are now being discussed by all parties.

A.9 Transparency of the Regulatory System

30. In general, SA's Companies Act (1973) provides for clear, transparent regulations concerning the establishment and operation of businesses. Business organizations of more than 20 persons that operate for gain must be registered as a company under the Act. Foreign investments are organized under the same rules and regulations as domestic firms, with one exception: foreign companies that choose not to form a firm in SA operate as "external companies." Regardless, the legal liabilities of an external company are not limited. Foreign investors may normally buy into local firms without limitation. No local equity requirements exist, except in the banking sector.

31. All businesses must obtain a business license from the local authority, which is valid indefinitely unless the business is relocated or acquired by a new owner. In general, businesses must register with the local Regional Services Council, Department of Labor, Workman's Compensation Commissioner, the appropriate Industrial Council, the South African Revenue Service, and the Department of Customs and Excise.

32. For a long time, South Africa's bourses, particularly the JSE Securities Exchange SA, had a reputation as easy places to practice insider trading. The oligarchic nature of South Africa's private sector, with its liquid markets and weak oversight, have tended to make insider trading a crime with limited risk. However, in 1998, Parliament passed the Insider Trading Act. The Act came into effect in January 1999, and transferred responsibility for curbing insider trading from the Securities Regulation Panel to the newly created Insider Trading Directorate (ITD) at the Financial Services Board (FSB). The new Act provides for civil court remedies against suspected insider traders and lowers the burden of proof. The ITD has the power of interrogation, search and seizure, and may procure assets or evidence. Guilty parties may be fined an amount of up to four times any profit made or loss avoided as a result of an inside trade. Criminal sanctions may also be pursued, resulting in fines of up to R2 million and imprisonment of up to 10 years. For additional information go to the Financial Service Board website at www.fsb.co.za.

33. Commencing January 2001, South Africa moved to a residence-based income tax system. Taxes are levied on residents of SA irrespective of where in

the world the income is earned. Although taxpayers are taxed on their world-wide income, some categories of income and activities undertaken outside SA are exempt from SA tax.

34. Income tax payers are divided into two categories: individuals, who are taxed at progressive rates, and companies, taxed at 30 percent of taxable income. A Secondary Tax on Companies (STC) - an additional tax on company income - is imposed at a rate of 12.5 percent on the net amount of dividends declared by a company. External companies are taxed at a flat rate of 35 percent on their South African source profits. Effective October 1, 2001, SA will institute a capital gains tax. Individuals include 25 percent of net capital gains in taxable income, and companies include 50 percent of capital gains in taxable income. As a result, the effective capital gains rate for individuals will vary from 0 to 10.5 percent and the rate for companies is 15 percent. SA also has a 14 percent value-added tax (VAT). Exports are zero-rated, and no VAT is payable on imported capital goods.

35. The Competition Act of 1998 (Act No. 89 of 1998) took effect in September 1999. The Act replaced the previous legislation with new provisions for a much stronger and more independent competition authority. The Commission has a range of functions, including investigating anti-competitive conduct; assessing the impact of mergers and acquisitions on competition and taking appropriate action; monitoring competition levels and market transparency in the economy; identifying impediments to competition, and playing an advocacy role in addressing these impediments. The Commission is independent but its decisions may be appealed before the Competition Tribunal and the Competition Appeals Court. With record growth in merger and acquisition activity and a growing number of enforcement and exemption cases, the new Commission has accumulated a large caseload in a short period that has severely tested its resources.

36. The Telecommunications Act of 1996 (TCA) created the SA Telecommunications Regulatory Authority (SATRA) to implement and interpret the Act. The TCA gave the telecommunications parastatal Telkom a monopoly over the provision of voice communication lines and the direct sale of infrastructure (including "last mile" services) to end-users. Furthermore, the TCA gave the Minister of Communications sole authority to set communications policy and to issue licenses. SATRA's role of interpreting the TCA, issuing regulations, and recommending licensees frequently put it conflict between the Ministry, Telkom, and commercial telecommunications providers. In point of fact, SATRA was unable to resolve the dispute between Value-Added Network Services (VANS) providers and Telkom for over three years. One of the VANS providers, AT&T, filed a complaint with the U.S. Trade Representative (USTR), alleging that SA was not living up to its WTO commitments by allowing Telkom to refuse service to VANS providers that Telkom claimed were reselling capacity. USTR is continuing to monitor progress in efforts to resolve the dispute.

37. In May 2000, SATRA and the Independent Broadcasting Authority (IBA) were merged into the Independent Communications Authority of SA (ICASA). ICASA is, however, confronted with the same troubles that beset SATRA. It has solicited input from the business community to assist in compiling new regulations covering VANS. As of June 2001, the Department of Communications has yet to issue final policy directives clarifying its stance on VANS and other telecommunications issues.

A.10 Efficient Capital Markets and Portfolio Investments

38. South Africa's banking system is comprised of three elements:

- The South African Reserve Bank (SARB) www.resbank.co.za
- Private sector banks
- Mutual Banks (Banks without ordinary shareholders, owned instead by all shareholders/depositors; only three of these banks still exist in South Africa.)

39. The SARB provides oversight of South Africa's financial markets. SA's sophisticated non-bank financial services industry is governed by the Financial Services Board, which regulates insurance, pension funds, unit trusts (i.e., mutual funds), participation bond schemes, portfolio management, and the financial markets:

- The Johannesburg Stock Exchange (JSE) www.jse.co.za
- The Bond Exchange of South Africa www.bondex.co.za

40. The Bank Act of 1990 regulates private banks. A variety of credit instruments are available to the private sector, including bankers' acceptances, fixed and variable rate securities, bonds, and equities. In May 1995, amendments to the Banks Act permitted foreign banks to conduct banking operations via branches, ending the earlier requirement that they establish subsidiaries. On November 1, 1995, the JSE began permitting foreign banks and firms to join its registry.   A complete list of the registered banks, banking associations, development banks, and related organizations that maintain a presence in South Africa is available on an ABSA-sponsored website at www.finforum.co.za/fininsts/bankdir.htm.

41. The South African Reserve Bank is nearing completion of meeting all recommendations of the Basel Committee on Banking Supervision. The Financial Services Board continues to assess and implement the recommendations of the International Organization of Securities Commissions in order to bring the non-banking financial services in line with international best practices.

42. At year-end 2000, there were a total of 616 firms listed on the Johannesburg Stock Exchange (JSE) with a total capitalization value of R1,551 billion (US$ 208.3 billion). This represents a slight decrease from the 1999 year-end figure of 668 firms with a total capitalization value of R1,616 billion (US$ 262.7 billion). However, turnover (total value of shares traded), increased from R448.4 billion in 1999 to R536.9 billion in 2000. Also on the increase were the number of shares traded, rising from 43.1 billion in 1999 to 49.6 billion in 2000. Since late 1999, the JSE has phased in a new electronic clearing and settlement system called STRATE (Share Transactions Totally Electronic). This will lead to the elimination of paper copies of equities by the end of 2001 with all shares recorded instead in the Central Securities Depository. Elimination of paper copies will eventually allow the JSE to settle trades within five days and, ultimately, three days. Additionally, the JSE has announced that it will replace its current trading system, JET, with the more advanced system developed and used by the London Stock Exchange. This changeover, to be implemented by year-end 2001, will allow easier access to markets in both Johannesburg and London. As a final ease-of-transfer measure, in July 2001, the South African Futures Exchange (SAFEX) was incorporated within the JSE allowing purchase of equities and derivatives from the same exchange.

43. The Bond Exchange of South Africa (BESA) regulates the fixed-interest securities market and is licensed under the Financial Markets Control Act. Membership includes banks, insurers, investors, stockbrokers, and independent intermediaries. The bond exchange consists principally of government bonds with some bonds from government parastatals also available.

A.11 Corruption and Crime

44. Though high rates of violent crime make it difficult for South African criminal and judicial entities to dedicate adequate resources to anti-corruption efforts, the government is committed to a tough stance on corruption. South African law provides for prosecution of government officials who solicit or accept bribes. U.S. firms have generally not identified corruption as a major obstacle to foreign direct investment.

45. During the past few years, crime in South Africa has been a far more serious problem than either corruption or political violence, and is an impediment to and a cost of doing business in the country. President Mbeki has publicly spoken of this problem and both South African citizens and foreign residents have expressed their discontent with crime and violence rates. The police have not been effective or well accepted in many communities because of their lack of training, the prevalence of internal corruption, and the stigma of their historically apartheid-based role in enforcing minority rule.

B. Bilateral Investment and Other Agreements

46. South Africa has signed various investment agreements since 1994. A complete list of the countries with which such agreements have been made is available on the SAG website at www.gov.za/yearbook/foreign.htm. Of particular note are:

- Facilitating investment flows between the participating countries within the southern African region:
    - The Southern African Customs Union (SACU) agreement with Botswana, Lesotho, Namibia, and Swaziland.
    - The Common Monetary Area agreement with Lesotho, Namibia, and Swaziland.
- Facilitating investment flows between the U.S and South Africa:
    - The U.S.-SA bilateral tax treaty eliminating double-taxation of business officials from one country working in another was signed in February 1997 and became effective January 1, 1998.

47. In February 1999, the U.S. and SA signed a Trade and Investment Framework Agreement (TIFA). This was the first TIFA the U.S. signed in Sub-Saharan Africa, indicating South Africa's importance as the leading African economic power. The TIFA established a Council on Trade and Investment that is composed of representatives of both governments and also consults with the private sectors of both countries. The council meets regularly to discuss specific trade and investment matters, and to negotiate agreements to remove impediments to trade and investment.

C. OPIC and Other Investment Insurance Programs

48. The Overseas Private Investment Corporation (OPIC) supports, finances, and insures U.S. overseas investment projects that are financially sound. OPIC's assistance contributes significantly to the social and economic development of the host country. OPIC aids U.S. investors through the following four principal activities which are designed to promote overseas investment and reduce the associated risks:

- Financing businesses through loans and loan guarantees.
- Supporting private investment funds.
- Insuring investment against a broad range of political risks.
- Engaging in outreach activities designed to inform the American business community.

49. South Africa signed a bilateral investment incentive agreement with the United States in November 1993 with respect to all of OPIC's programs. Today, OPIC backs a number of investment funds focused on Sub-Saharan Africa including the Africa Growth Fund (US$ 25 million), the Modern Africa Growth and Investment Fund (US$ 105 million), and the ZM Investment Fund (US$ 120

million). OPIC is presently establishing the US$ 350 million Sub-Saharan Africa Infrastructure Fund (SAIF) to target infrastructure projects in all of Sub-Saharan Africa, including South Africa. Additional information is available at www.opic.gov.

50. South Africa is also a member of the World Bank's Multilateral Investment Guarantee Agency (MIGA).

D. Labor

51. Since 1994, the South African government has been systematically removing the vestiges of the apartheid labor system. The government is attempting to erect in its place an economic system that is increasingly more open to international competition, more flexible, and characterized by employment security, reasonable wages, and decent working conditions. The new system, which was negotiated between government, business, and organized labor under the aegis of the National Economic Development and Labor Council (NEDLAC), places a high value on worker rights and collective bargaining between parties that are equally empowered.

52. The new labor dispensation rests on four legislative pillars:

- The Labor Relations Act, in effect since November 1996 is the cornerstone of the entire regulatory structure. It enshrines both the right of workers to strike and also the right of management to lock out workers and hire replacement labor during a strike. The Act created the Commission on Conciliation, Mediation, and Arbitration (CCMA). The Commission currently has a caseload far in excess of that which was originally projected because of the ease of access to its services.

- The Basic Conditions Employment Act, implemented in December 1998, establishes a 45-hour workweek and minimum standards for overtime pay, annual leave, notice of termination, and the like.

- The Employment Equity Act prohibits unfair employment discrimination and requires large and medium employers to prepare affirmative action plans to ensure that blacks, women, and disabled persons are adequately represented in the workforce.

- The Skills Development Act imposes a levy on employers equal to 1.0 percent of payroll to be used for training programs devised by industry-specific training authorities and jointly administered by employer organizations and labor.

53. Many in business claim that the South African labor market is over-regulated, and have urged the government to scale back some of the recently

passed legislation. In response, the Labor Minister proposed a number of amendments to the labor laws which were later refined and agreed upon in an informal business-labor body known as the Millennium Labor Council (MLC). This bilateral agreement forms the basis of negotiations which continue in NEDLAC.

54. According to the latest (September 2000) labor force survey published by Statistics South Africa and given the International Labor Organization (ILO) definition of unemployed (which excludes persons who have not looked for work in the four weeks prior to the interview), the official unemployment rate is 25.8 percent. If the aforementioned people are included, the 'expanded unemployment rate' is 35.9 percent. Education and skills training are not keeping pace with the rapid increase in demand for skilled workers. Official unemployment rates by race are reported as:

- Africans: 30.9 percent
- 'Coloureds': 18.9 percent
- Indians: 15.3 percent
- Whites: 5.8 percent

55. There are about 3.3 million union members in South Africa, composing 21 percent of the economically active population. Most union members belong to affiliates of one of the three major union federations: the Congress of South African Trade Unions (COSATU), the Federation of Unions of South Africa (FEDUSA), and the National Council of Trade Unions (NACTU). Although COSATU, the largest federation with some 1.8 million members, is formally allied with the ruling African National Congress (ANC) and the South African Communist Party (SACP), it often opposes the government on matters of economic policy. One of COSATU's particular targets are SA governmental efforts to privatize municipal services and State-owned corporations. Striking is protected under South African law, but in general labor militancy has been declining since 1994.

E. Foreign Direct Investment Statistics

56. Foreign direct investment (FDI) data is readily available in South Africa, but published statistics vary depending on their source and definition. Among the numerous institutions that provide foreign investment data, the U.S. Embassy in South Africa tends to rely mostly on the South African Reserve Bank (SARB). The SARB statistics conform to the IMF definition of FDI* and represent actual investment, excluding announced, but not completed, "intended" investment. However, the SARB does not provide country-specific figures which distinguish between actual new investment flows and changes in investment stocks caused by asset swaps, exchange rate adjustments, and mergers and acquisitions. This situation makes it difficult to track the U.S. and other countries' FDI position in SA on a yearly basis. Because SARB statistics only provide an annual total for all

the countries' flows combined, the U.S. also relies on more updated information obtained from the Investor Responsibility Research Center (IRRC - a Washington, D.C. based corporate research provider) and the South Africa-based firm, Business Map (BM). The latter two offer fee-based services for a wide range of investor-related data and analysis and may be contacted via their respective web sites, www.irrc.org and www.bmap.co.za.

(*FDI is generally defined as ownership of at least ten percent of the voting rights in an organization by a foreign resident or several affiliated foreign residents, including equity capital, reinvested earnings, and long-term loan capital.)

57. Between 1994 and 1998, direct investment abroad by South African multi-national firms outpaced that of FDI inflows into South Africa. Due to the listing of three major South African companies abroad, the FDI assets held by non-residents at the end of 1999 surpassed South African companies' direct investment in assets in foreign countries.

58. The level of South Africa's liabilities and assets valued as at the end of December 1999 was significantly higher than at the end of December 1998. These higher levels could mainly be attributed to a reclassification of the liabilities and assets of three companies: Old Mutual (insurance), Anglo America (mining) and the South African Breweries, which moved their primary listings from South Africa to the London Stock Exchange during 1999. The flows through the financial account of the balance of payments in 1999 reflect only part of the revised classification. For this reason, changes in the international assets and liabilities of the country will not necessarily be consistent with the capital flows through the financial account.

59. The following FDI statistics were drawn from the SARB's June 2001 Quarterly Bulletin. The conversion exchange rate used was that of the average for each year cited.

Average exchange rates used below:

	1996	1997	1998	1999	2000
US$/Rand	4.30	4.61	5.53	6.11	6.93

Table 1: Year-End Stock Of Foreign Direct Investments in South Africa

	1996	1997	1998	1999 (see para. 62)
Rand billion	62.0	81.46	91.86	318.60
US$ billion	14.4	17.67	16.61	52.15

Table 2: Year-End Stock Of South African Direct Investment Abroad

	1996	1997	1998	1999
Rand billion	114.0	113.2	170.0	203.0
US$ billion	26.5	29.0	30.74	29.30

Table 3: Gross Domestic Product (in Rand billion at current prices) and Foreign Direct Investment as a Percentage of GDP

	1996	1997	1998	1999	2000
GDP	618.4	683.7	735.1	795.6	873.6
%FDI	10.0	12.0	12.5	40.0	N.A.

Table 4: Year-End Stock Of Foreign Direct Investment in South Africa by Region/Country (in billions)

REGION/COUNTRY	RAND		US$	
	1998	1999	1998	1999
EUROPE - Total	65.7	288.0	11.9	47.1
-- UNITED KINGDOM	36.6	248.3	6.6	40.6
-- GERMANY	10.5	16.8	1.9	2.8
-- SWITZERLAND	7.6	8.4	1.4	1.4
-- NETHERLANDS	4.8	5.4	0.9	0.9
-- FRANCE	2.2	2.1	0.4	0.4
-- ITALY	0.7	1.6	0.1	0.3
N&S AMERICAS - Total	15.5	19.1	2.8	3.1
-- USA	13.8	17.3	2.5	2.8
AFRICA Total	0.8	1.8	0.1	0.3
ASIA - Total	9.3	8.75	1.7	1.4
-- MALAYSIA	7.0	6.6	1.3	1.1
-- JAPAN	1.3	0.9	0.2	0.1
OCEANIA Total	0.5	0.9	0.1	0.2
INT'L ORGANIZATIONS	0.1	0.1	0.01	0.02
TOTAL	91.9	318.6	16.7	52.15

Table 5: Year-End Stock Of South African Direct Investment Abroad By Region/Country

REGION/COUNTRY	RAND		US$	
	1998	1999	1998	1999
EUROPE Total	151.7	176.6	27.4	28.9
-- UNITED KINGDOM	57.7	78.6	10.4	12.9
-- LUXEMBURG	44.5	42.1	8.0	6.9
-- SWITZERLAND	25.2	22.1	4.5	3.6
N&S AMERICA Total	6.4	10.9	1.15	1.8
-- USA	4.5	6.5	0.8	1.1
AFRICA Total	9.1	10.0	1.6	1.6
ASIA Total	1.6	1.3	0.3	0.2
OCEANIA Total	1.1	4.2	0.2	0.7
TOTAL	170.0	203.0	30.6	33.3

Table 6: Year End Stock Of Foreign Direct Investment In South Africa by Industry Sector

INDUSTRY	RAND		US$	
	1998	1999	1998	1999
Agriculture, forestry,& fishing	0.4	0.4	0.1	0.1
Mining(*)	7.2	114.1	1.3	18.7
Manufacturing(*)	40.4	79.5	7.3	13.0
Construction	0.3	0.5	0.1	0.1
Trade, catering, & accommodation	8.3	10.6	1.5	1.7
Transport, storage, & communication	5.8	8.4	1.0	1.4
Finance, insurance, real est.,& business services (*)	29.4	105.0	5.31	17.2
Social services	0.1	0.1	0.02	0.02
TOTAL	91.9	318.6	16.7	52.1

(*The jump in these sectors during 1999 is the result of 3 major South African companies moving their listings to the UK - see par. 58)

Table 7: FDI Flows into South Africa in Rand billions - Capital movements 1993 to 2001

1993	0.03	1996	3.52	1999	9.18
1994	1.35	1997	17.59	2000	6.08
1995	4.50	1998	3.10	2001	4.20
				(first quarter only)	

60. The top three investors in South Africa have been the UK, the U.S., and Germany. During 1999 the largest FDI inflows were received from the UK (listing of 3 South African companies on the London Stock Exchange), the U.S. (Coca Cola), Germany (additional investment in BMW), and Italy (purchase of 20 percent in the Airport Company of SA). Also investing in South Africa during 1999 were Switzerland (hotels), Belgium, the Netherlands, Luxemburg, and Oceania.

61. In 2000 South Africa saw a drastic decline in FDI. The few prominent deals included the acquisition of the Health and Racquet Club by the UK group Virgin Active for R319.6 million; British Airways' acquisition of 18 percent of Comair for R168 million; and the acquisition of a 22 percent stake in Automated Identification Technologies (AIT) by a U.S. consortium for about R120 million (AIT is involved in developing security systems for tracking and managing assets). Another SA company, Dimension Data, also shifted its primary listing to the UK during 2000.

62. The Business Map* recently reported FDI statistics for the first quarter of 2001. It was noted that FDI in 2001 began strongly with Italy ranking as the top investing country for the period. This was due to the acquisition of Cirio by the Italian food group Del Monte Foods for R1.33 billion. Malaysia ranked second in foreign investment due to the R1.3 billion property development by the Malaysian Resources Corporation, Berhad. Following a large investment in the last quarter of 2000, it seems that Malaysian investments may again be on the increase, having been strong in the period before the 1998 Asian crisis. The U.S. continued its strong presence among the top investing countries, boosted by the R1.07 billion acquisition in the paper industry of Mondi’s assets by the Global Environment Fund to create Global Forest Products. Additional investment included Credit Suisse First Boston, who bought a 45 percent stake in the brokerage AMB-DLJ, and the Scandinavian Building Systems, who acquired Corobrik.

(*The Business Map definition of FDI includes mergers and acquisitions, new investments, privatization, expansions that result in new productivity capacity, and firm plans or intentions to invest, i.e., commitments).

Table 8: Foreign Companies Invested in South Africa, by Country

COUNTRY	NUMBER (*)
U.S.	636
Germany	467
UK	271
Belgium	150
Netherlands	136
France	135
Italy	69
Switzerland	61
Japan	58
Denmark	49

(* Includes subsidiaries and joint ventures, local partners, agents, franchises and representatives. Source - Business Map)

65. U.S. companies are present in the following sectors of the South African economy: transport equipment; telecommunications and IT; professional services; pharmaceutical and medical products; manufacturing; motor and components; media; print and publishing; machinery; food; beverages and tobacco; financial services and in chemicals, plastic and rubber.

64. The following companies have invested in excess of R1 billion in South Africa since 1994:

- Canada - Placer Dome
- Denmark - AP Moller
- France - Lafarge
- Germany - BMW
- Italy - Airporti di Roma; Del Monte Foods
- Malaysia - Petronas ; Telecom Malaysia
- Switzerland - Swissair; Movenpick Hotels
- U.K. - Billiton; Lonrho Plc.
- U.S. - Caltex; Coca Cola; Dow Chemicals; IBM; SBC

65. Other significant US investments include: Ford, McDonalds', Levi Strauss, Minute Maid, Nike, Salem, Silicon Graphics, SBC, Lucent Technologies, Microsoft, Compaq Computers, Dell, Sara Lee, Caterpillar, Goodyear, Eli Lilly and General Electric. Pepsi and Federal Mogul were the only two U.S. companies that left SA during 1994 to 1999. Many of these US investors are multinational corporations. Unilever and Colgate-Palmolive remained in SA during the sanction period and have expanded to neighboring countries.